OCTOBER TERM, 1981

STATE OF ARIZONA, PETITIONER

v.

ISAAC EVANS

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether, if police officers arrest an individual after receiving from court personnel incorrect information concerning a previously issued arrest warrant, evidence seized incident to the arrest should be suppressed.

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In the Supreme Court of the United States

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No. 93-1660

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INTEREST OF THE UNITED STATES

The United States relies on various systems to maintain information on criminal investigations. For example, the National Crime Information Center (NCIC) computer system provides data on outstanding arrest warrants to agents in the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Secret Service, and the Bureau of Alcohol, Tobacco and Firearms. State and local law enforcement agencies make use of the NCIC system, but many jurisdictions also maintain their own systems. In this case, the State of Arizona presents the question whether the exclusionary rule applies where police officers make an arrest in reliance on an inaccurate entry of an arrest

warrant contained in a state information system. Because similar issues could arise with respect to federal information systems, the United States has a significant interest in this case.

STATUTORY PROVISIONS AND RULE INVOLVED

Pertinent provisions of the Arizona Revised Statutes Annotated and the Arizona Rules of Criminal Procedure are set out in the Appendix to this brief.

STATEMENT

On January 5, 1991, Phoenix police officer Bryan Sargent observed respondent Isaac Evans driving the wrong way down a one-way street in front of the main police station. Officer Sargent stopped respondent and asked to see his driver's license. Respondent replied that his license had been suspended. Officer Sargent then obtained respondent's name and entered it into a data terminal, located in the patrol car, that provided access to the police department's computerized information system. See J.A. 15-18.

Officer Sargent's computer query confirmed that respondent's license had been suspended. The check also revealed an outstanding misdemeanor warrant for respondent's arrest, but it did not identify why his arrest was sought. J.A. 19. Officer Sargent returned to respondent and advised him that he was under arrest. J.A. 19.[1] While he was being handcuffed, respondent

[1] The officer testified that he had arrested respondent "for the warrant," J.A. 19, but he later stated that he had also arrested respondent on account of the suspended license. J.A. 23. The officer noted, however, that he would "probably not" have made the arrest in the absence of the outstanding warrant. J.A. 23-24. Arizona law authorizes peace officers to arrest a motorist for driving with a suspended license, Ariz. Rev. Stat. Ann. § 13-3883(A)(2) (1989 & Supp. 1993), § 28-473 (1989 & Supp. 1993), but the officer testified that he would normally issue a citation for that offense. J.A. 23, 24-25. See also Ariz. Rev. Stat. Ann. § 13-3903(A) (1989) (allowing officers to release an arrested person from custody "in lieu of taking such person to the police station" in the case of misdemeanors and petty offenses).

dropped a hand-rolled cigarette he had been carrying, which Officer Sargent's partner retrieved. The officers noticed that the cigarette smelled like marijuana. They searched respondent's car and found a bag of marijuana under the passenger seat and rolling papers and marijuana residue in the purse of a passenger. J.A. 19-22. After the arrest, Officer Sargent contacted his police station and received confirmation that the arrest warrant remained valid. J.A. 22.

The State charged respondent with possession of marijuana, and respondent filed a motion to suppress the evidence obtained through the arrest and search. The chief clerk of the justice court that had issued the arrest warrant testified at the suppression hearing concerning the events surrounding its issuance. J.A. 25-37. She stated that a justice of the peace had originally ordered issuance of a warrant for respondent's arrest on December 13, 1990, after respondent failed to appear to answer for several traffic violations. J.A. 28-29. On December 19, respondent appeared before a *pro tem* justice of the peace who entered a notation in the file stating "Defendant appeared; quash warrant and release O.R.; set for pretrial." J.A. 29. The justice court's records contained no indication, however, that any of the justice court's three clerks, who have that responsibility, had ever notified the police department of the *pro tem* justice's action. J.A. 29-30. When the police notified the justice court that they had arrested respondent, the

court learned of the error and instructed the police to release him. J.A. 30.[2]

Respondent argued that the State had unlawfully arrested him on the basis of a quashed warrant, which invalidated the arrest and the search incident to it. See J.A. 46-48. The State contended that the arrest was valid because it was objectively reasonable regardless of the status of the warrant and that the good-faith exception to the exclusionary rule should apply because the police had made the arrest and conducted the incidental search in the good-faith belief that respondent was subject to an outstanding warrant. See J.A. 48-51. Ruling from the bench, the trial court granted the motion to suppress, holding that a state appellate decision involving erroneous information on a law-enforcement computer information system, *State* v. *Greene*, 783 P.2d 829 (Ariz. Ct. App. 1989), required suppression. J.A. 50-53. The trial court court made no express factual findings regarding the source of the error, concluding that the

[2] The court clerk suggested that the error in this case occurred because the *pro tem* justice did not enter the notation to quash the warrant in the customary manner, the court clerks overlooked the justice's notation, and they consequently failed to notify the police department of the justice's action. J.A. 35. She stated that an error of this sort occurs "maybe on[c]e every three or four years." J.A. 37. The testimony of a police records clerk responsible for communications with the justice court supported the court clerk's explanation of the error. The police clerk testified that the police department keeps records of calls from the justice court concerning warrants and that those records contained no indication that the court had contacted the police to recall the warrant for respondent's arrest. J.A. 38-46.

result would be the same whether the error was caused by the justice court or the police. J.A. 52-53.[3]

A divided state court of appeals reversed the trial court's ruling. Pet. App. 22a-40a. The appellate court distinguished *Greene* on the ground that the decision there had addressed police negligence in maintaining police computer files; here, by contrast, "there is no evidence that the arresting officers or the Phoenix Police Department were negligent in any way." *Id.* at 30a-31a. The court of appeals also noted that the court below "appeared to overgeneralize the rationale behind the exclusionary rule," which is "to deter unlawful *police conduct*." *Id.* at 32a (citing *United States* v. *Leon*, 468 U.S. 897, 916 (1984), and *Michigan* v. *Tucker*, 417 U.S. 433, 446 (1974)). The appellate court found the officers' actions in this case to be objectively reasonable, given that "the arresting officers had absolutely no way of knowing that [respondent's] arrest warrant had been quashed." Pet. App. 34a. It also found that exclusion of the seized evidence would not serve to deter future such errors by judicial personnel. *Id.* at 33a-34a.

The Arizona Supreme Court reversed the decision of the court of appeals. Pet. App. 1a-21a. The state supreme court first stated that it was "unable to follow the lead of the court of appeals in dismissing conflicting inferences raised by evidence on the issue whether fault rested with the justice court, the police, or both." *Id.* at 4a-5a. But even if court personnel *had* been solely at

[3] The State argued that "[t]his doesn't fall within the ambit of *Greene*, because it wasn't the police department's fault. And we have proved that." J.A. 52. The court responded, "I understand. But it is the State's fault. I can't find a distinction between State action, whether it happens to be the police department or not." J.A. 52.

fault, the state supreme court held, the exclusionary rule should apply:

> We cannot support the distinction drawn by the court of appeals and the dissent between clerical errors committed by law enforcement personnel and similar mistakes by court employees. We are concerned here with the performance of purely ministerial functions, not the exercise of judicial discretion. While it may be inappropriate to invoke the exclusionary rule where a magistrate has issued a facially valid warrant (a discretionary judicial function) based on an erroneous evaluation of the facts, the law, or both, *Leon*, 468 U.S. 897, 104 S. Ct. 3430 (1984), it is useful and proper to do so where negligent record keeping (a purely clerical function) results in an unlawful arrest. Such an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system.

Id. at 8a-9a. One justice dissented, stating that "[t]his case falls squarely within the rule of *Leon*." *Id.* at 15a.

SUMMARY OF ARGUMENT

The State of Arizona challenges the Arizona Supreme Court's determination that the exclusionary rule requires suppression of evidence seized incident to an unlawful arrest regardless of whether court personnel or police personnel were responsible for the clerical error that led to the arrest. We submit that the difference is significant in determining whether the exclusionary rule should apply.

The primary purpose of excluding evidence seized in violation of the Fourth Amendment is to deter future police misconduct. *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987); *United States* v. *Leon*, 468 U.S. 897, 916 (1984). If

an arrest is invalid solely because court personnel made a clerical error in relating information, then the suppression of evidence seized incident to that arrest would not fulfill the rule's primary objective. Court clerks are distinct from police officers. They are not "adjuncts to the law enforcement team" who would "have [a] stake in the outcome of particular criminal prosecutions" and who would be deterred from future errors by the suppression of the evidence in this case. *Leon*, 468 U.S. at 917. Hence, if court personnel alone are responsible for the informational error leading to an invalid arrest, the exclusionary rule should not require suppression of relevant evidence seized incident to that arrest.

If the police department is responsible for the erroneous transmission of information that results in an invalid arrest, then the exclusionary rule could conceivably have a deterrent effect. The application of the rule in that context, however, necessarily depends on the type of error and the circumstances in which it arises. This Court has delineated the reach of the exclusionary rule in particular factual situations by balancing the public interest in deterring police misconduct against the costs to the judicial system of suppressing relevant evidence. See *Leon*, 468 U.S. at 906-913. The reasonableness of the police conduct is an important factor in the analysis. The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Id.* at 918-919.

The Arizona Supreme Court was mistaken in concluding that the exclusionary rule should apply in this case irrespective of whether court personnel or the police were responsible for the erroneous warrant information that led to respondent's arrest. The decision

should therefore be reversed. Because the trial court did not make a specific factual finding whether court personnel or police personnel were responsible for the erroneous information, this Court should remand the case for determination of the facts necessary to resolve respondent's suppression motion.

ARGUMENT

THE ARIZONA SUPREME COURT ERRED IN CONCLUDING THAT THE EXCLUSIONARY RULE APPLIES IN THIS CASE REGARDLESS OF WHETHER COURT PERSONNEL OR POLICE PERSONNEL WERE RESPONSIBLE FOR PROVIDING THE ARRESTING OFFICERS WITH INACCURATE WARRANT INFORMATION

The State of Arizona challenges the Arizona Supreme Court's determination that the exclusionary rule requires suppression of evidence seized incident to an unlawful arrest irrespective of whether court personnel or police personnel were responsible for the clerical error that led to the arrest. We submit that the difference is significant in determining whether the exclusionary rule should apply. The exclusionary rule should not be applied if court personnel are responsible for the outdated or incorrect warrant information. The rule may be applicable, however, if the police are responsible for providing the erroneous information, depending on the type of error and the circumstances in which it arises. The Arizona Supreme Court's decision should accordingly be reversed and the case should be remanded for factual findings respecting the source of the error in this case.[4]

A. If the Courts Are Responsible For The Inaccurate Warrant Information, Then The Exclusionary Rule Should Not Apply

This Court has repeatedly emphasized that the exclusionary rule is "neither intended nor able to 'cure the invasion of the defendant's rights which he has already suffered'"; rather, it "operates as a 'judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.'" *Illinois* v. *Krull*, 480 U.S. 340, 347 (1987); *United States* v. *Leon*, 468 U.S. 897, 906 (1984); see also *United States* v. *Calandra*, 414 U.S. 338, 347 (1974). Accordingly, the exclusionary rule does not result in suppression of evidence whenever the Fourth Amendment is violated. "As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced." *Krull*, 480 U.S. at 347; see also *Leon*, 468 U.S. at 908; *Calandra*, 414 U.S. at 348.

In this case, the Arizona Supreme Court held that even if the justice court clerks were entirely at fault for failing to provide updated warrant information, the exclusionary rule should nevertheless apply. The court reasoned that application of the exclusionary rule would be "useful and proper * * * where negligent record keeping (a purely clerical function) result[ed] in an

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[4] Arizona's petition for a writ of certiorari does not directly contest whether respondent's arrest and the subsequent search actually violated the Fourth Amendment. Because Arizona has not squarely raised that issue, we express no opinion as to whether the Fourth Amendment was actually transgressed in this case. Cf. *United States* v. *Leon*, 468 U.S. 897, 905 (1984).

unlawful arrest," because "[s]uch an application will hopefully serve to improve the efficiency of those who keep records in our criminal justice system." Pet. App. 9a.

The Arizona court's expansive application of the exclusionary rule is inconsistent with this Court's decisions, which make clear that the exclusionary rule's deterrence rationale does not apply with equal force to all actors in the criminal justice system. See, *e.g.*, *Krull*, 480 U.S. 347-355; *Leon*, 468 U.S. at 916-917. The Court specifically held in *Leon* that the exclusionary rule is not an effective mechanism for deterring judges and magistrates from making errors, explaining that "[t]o the extent that proponents of exclusion rely on its behavioral effects on judges and magistrates in these areas, their reliance is misplaced." 468 U.S. at 916. The three controlling considerations that this Court identified in that case—and subsequently applied in *Krull*—apply in this case as well.

First, court clerks are not in any sense police officers and therefore fall outside the exclusionary rule's traditional focus on police officer misconduct. *Krull*, 480 U.S. at 348; *Leon*, 468 U.S. at 916. Second, respondent has brought forward no evidence suggesting that court clerks "are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Krull*, 480 U.S. at 348, quoting *Leon*, 468 U.S. at 916. Third, like legislators and judges, court clerks are not "adjuncts to the law enforcement team." *Krull*, 480 U.S. at 350-351. They do not "have [a] stake in the outcome of particular criminal prosecutions. The threat of exclusion thus cannot be expected significantly to deter them." *Leon*, 468 U.S. at 917. See generally *Shadwick* v. *City of Tampa*, 407 U.S. 345, 350-352 (1972)

(noting that a city's court clerks were "subject to the supervision of the municipal court judge," they were "neutral and detached" from law enforcement activities, and they had no "partiality, or affiliation * * * with prosecutors or police").[5]

The Arizona Supreme Court cited nothing to support its suggestion that the exclusionary rule should apply in this case because the error here was "purely clerical." Pet. App. 9a. This Court's decisions reveal that the Arizona court's distinction between "discretionary judicial function[s]" and "clerical function[s]" (*ibid.*) is not sound. This Court has specifically held that the exclusion of probative evidence is inappropriate in those cases where the error is clerical in nature. See *Massachusetts* v. *Sheppard*, 468 U.S. 981, 990-991 (1984). As the Court stated in *Sheppard*, "Suppressing evidence because the judge failed to make all the necessary clerical corrections despite his assurances that such changes would be made will not serve the deterrent function that the exclusionary rule was designed to achieve." *Ibid.*

The Court observed in *Leon* that "the exclusionary sanction is not necessary meaningfully to inform judicial officers of their errors," and withholding that sanction will not "in any way reduce [their] professional incentives to comply with the Fourth Amendment [or] encourage them to repeat their mistakes." 468 U.S. at 917. The record in this case indicates that those observations are equally true with respect to court clerks. Immediately upon learning of respondent's arrest, the clerks in this case took prompt action to

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[5] Indeed, this Court recognized in *Shadwick* that States may authorize court clerks to act as "judicial officers" with the power to issue and quash arrest warrants. 407 U.S. at 352-354.

correct their error and to prevent similar mistakes in other cases. J.A. 37. The further action of suppression would accomplish nothing more.

B. If the Police Are Responsible For The Inaccurate Warrant Information, Then The Application Of The Exclusionary Rule Will Depend On The Facts Of The Particular Case

This Court's decisions support a categorical exception to the exclusionary rule for court clerical errors. They do not dictate, however, a similar categorical approach with respect to police clerical errors. As this Court has explained, "the exclusionary rule is designed to deter police misconduct." *Leon*, 468 U.S. at 916. If the police department wrongfully transmits erroneous information to the arresting officers that results in an invalid arrest and search, then excluding the evidence seized could conceivably deter future misconduct. But the application of the exclusionary rule in that context depends on the type of error and the circumstances in which it arises.

This Court has determined the reach of the exclusionary rule by balancing the public interest in deterring police misconduct against the costs to the judicial system of suppressing relevant evidence. See *Leon*, 468 U.S. at 906-913. The reasonableness of the police conduct is an important factor in the analysis. As this Court has explained, "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right." *Id.* at 919 (quoting *Michigan* v. *Tucker*, 417 U.S. at 447). The exclusionary rule "cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity." *Leon*, 468 U.S. at 919.

The overall reliability and usefulness of certain kinds of law enforcement information systems may support an exception to the exclusionary rule when police rely in good faith on information present in those systems. The record in this case, however, does not adequately present that issue for the Court's consideration at this time. Development of any general principles regarding the extension of the good faith exception to situations where police rely upon erroneous information contained in law enforcement computer-information systems should, in our view, await a case in which relevant characteristics of such systems and the legal questions they pose can be thoroughly explored.

C. The Court Should Reverse the Decision of the Arizona Supreme Court and Remand the Case For Further Proceedings

The Arizona Supreme Court incorrectly held that the exclusionary rule should apply in this case irrespective of whether court personnel or the police were responsible for the erroneous warrant information that led to respondent's arrest. That decision should therefore be reversed, and the case should be remanded for further proceedings to determine whether suppression of the evidence is warranted on the facts of this case. The transcript of the suppression hearing suggests that court personnel, rather than police personnel, were responsible for the clerical error that led to respondent's arrest. See pp. 3-4 & note 2, *supra*. As the state supreme court noted, however, the trial judge "made no express finding with respect to responsibility for the error, apparently concluding it did not matter." Pet. App. 5a. Because the trial court did not make specific findings, this Court should return the case to the

Arizona court system for determination of the facts necessary to resolve respondent's suppression motion.

CONCLUSION

The judgment of the Arizona Supreme Court should be reversed and the case should be remanded for further proceedings.

Respectfully submitted.

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APPENDIX

Arizona Revised Statutes Annotated § 13-3883 (1989 & Supp. 1993) provides, in relevant part:

> A. A peace officer may, without a warrant, arrest a person if he has probable cause to believe:
>
> * * * * *
>
> 2. A misdemeanor has been committed in his presence and probable cause to believe the person to be arrested has committed the offense.
>
> * * * * *
>
> 4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under § 13-3903.

Arizona Revised Statutes Annotated § 13-3887 (1989) provides, in relevant part:

> Method of arrest by officer by virtue of warrant:
>
> When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest * * *. The officer need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requires, the warrant shall be shown to him as soon as practicable.

Arizona Revised Statutes Annotated § 13-3903 (1989) provides, in relevant part:

> A. In any case in which a person is arrested for an offense that is a misdemeanor or a petty offence, the arresting officer may release the arrested person from custody in lieu of taking such person to the police station by use of the procedure prescribed in this section.

Arizona Revised Statutes Annotated § 28-473 (1989 & Supp. 1993) provides, in relevant part:

> A. * * * [A]ny person who drives a motor vehicle on a public highway within this state at a time when his privilege so to do is suspended, revoked, cancelled or refused or when he is disqualified from driving is guilty of a class 1 misdemeanor.

Arizona Rule of Criminal Procedure 3.2(a) provides, in relevant part:

> [The arrest warrant] shall state the offense with which the defendant is charged and command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county.